

**Northwest Illinois and Eastern Iowa District Council of Carpenters and Carpenters Local No. 790 and C. Iber & Sons, Inc. and Local Union No. 109, Laborers' International Union of North America.** Case 33-CD-359

September 22, 1993

**DECISION AND DETERMINATION OF DISPUTE**

BY CHAIRMAN STEPHENS AND MEMBERS  
DEVANEY AND RAUDABAUGH

The charge in this Section 10(k) proceeding was filed on March 1, 1993,<sup>1</sup> by the Employer, C. Iber & Sons, Inc., alleging that the Respondent, Carpenters Local 790, had violated Section 8(b)(4)(D) of the National Labor Relations Act by engaging in proscribed activity with an object of forcing the Employer to assign certain work to employees it represents rather than to employees represented by Laborers Local 109. The hearing was held on April 1, 2, and 26 before Hearing Officer Debra L. Stefanik.

The National Labor Relations Board affirms the hearing officer's rulings, finding them free from prejudicial error. On the entire record, the Board makes the following findings.

**I. JURISDICTION**

The Employer, a Delaware corporation, is a general contractor engaged in commercial and industrial construction with an office and principal place of business in East Peoria, Illinois. The parties stipulated that in the 12 months preceding the hearing, a representative period, the Employer received gross revenues in excess of \$50,000 for performance of services directly to customers outside the State of Illinois and purchased and received services or materials in excess of \$50,000 directly from outside the State of Illinois. The parties further stipulated, and we find, that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that Carpenters Local 790 and Laborers Local 109 are labor organizations within the meaning of Section 2(5) of the Act.

**II. THE DISPUTE**

*A. Background and Facts of Dispute*

The Employer is the general contractor in charge of the construction of an addition to the Faraday Hall building at Northern Illinois University in DeKalb, Illinois. One facet of the construction involves the erection of shoring to make forms into which concrete is poured. The shoring erection work in issue includes assembling tubular metal sills, shoes, horsing, and saddles, but does not include beams, joists, and plywood

decking. The Employer has collective-bargaining agreements with both Carpenters and Laborers that appear to cover such shoring erection, which were executed in July or August 1992, prior to the commencement of the Faraday Hall project.

On December 29, 1992, the Employer held a 2- to 3-hour meeting attended by representatives of the Carpenters, the Laborers, and the Northern Illinois Contractors Association. Mike Sleister, the Employer's vice president, and Michael Childers, the field superintendent at the project since December 21, 1992, were present. Also present was Glenn Turpoff, the executive director of the contractors association. Sleister testified that the meeting was conducted "to resolve the rumblings about this shoring system," i.e., which Union's members should perform the work. Prior to this meeting the shoring work had been assigned to employees represented by the Carpenters. Sleister stated that prior to that meeting, despite the grumbling, neither Union had threatened to picket or strike or take other action related to performance of the shoring erection work. In the course of the meeting, each of the Unions claimed to have previously performed such work in the DeKalb area and claimed the work for employees it represents. Sleister testified that at the end of the meeting, he assigned the shoring erection work to the Carpenters, as evidenced by notes he took at the meeting which indicate in pertinent part that "Carpenters install deck forming & false work," and that his decision was based on the Employer's past practice.<sup>2</sup>

Notwithstanding his presence at the meeting, Childers thereafter used employees represented by both Unions to perform shoring erection work. Childers testified that he did so in an effort to promote labor harmony at the jobsite and that shoring erection proceeded in this manner until January 29. Thus, on the 5 days during this period that shoring erection was performed, Childers himself erected shoring with the help of a single laborer for 3 days, and assigned the work to two carpenters and two laborers on 2 other days. On January 29, according to Childers, Carpenters Steward Dave Woods grieved the use of laborers to perform the work, stating, "the practice of the laborers putting the shoring together in any way, shape or form can't be tolerated, and it—and it is solely the work of the carpenters." In response, Childers retrieved a copy of Sleister's notes from the December 29 meeting and showed it to Laborers Steward David Taylor. Childers explained to Taylor that he planned to "stick strictly" to Sleister's assignment of the work to the employees represented by the Carpenters and said that "from this day hence . . . the carpenters will 100% build the

<sup>1</sup> Except where otherwise specified, all dates are in 1993.

<sup>2</sup> Although the Carpenters agrees that Sleister's notes establish that an assignment of the work was made at this meeting, the Laborers asserts that the notes reflect what was discussed but do not constitute an assignment of work.

shoring.” Childers added that carpenters would install the shoring and laborers would “tend” the carpenters.<sup>3</sup>

On February 9, the Laborers grieved the Employer’s sole use of carpenters to perform the work. James Schmitt, the Employer’s president, subsequently contacted Carpenters District Council Business Agent Tom Sakalauski to propose that composite crews of carpenters and laborers perform the work. The parties stipulated that on February 26, Sakalauski told Schmitt that he would not agree to the use of composite crews and threatened to picket if the assignment of the work was changed to permit laborers to share in the erection of the shoring.

#### B. Work in Dispute

The disputed work involves the erection of sill, shoe, horsing, and saddle shoring forms at the Faraday Hall building addition jobsite at Northern Illinois University.

#### C. Contentions of the Parties

The Employer contends that its assignment of the work in dispute to the employees represented by the Carpenters was proper and was based on 30-year past practice and its need for efficiency and safety. The Carpenters contends that the six factors on which the Board generally relies in resolving jurisdictional disputes establish that the work was properly assigned to the employees it represents. The Laborers contends that the Employer’s past practice at this jobsite and others, area practice, and relative skills and efficiency support an award of the work in dispute to employees it represents.

The parties stipulated that there is no agreed-on method of resolving this dispute and that neither of the Unions has disclaimed the work.

#### D. Applicability of the Statute

The record establishes that the disputed shoring erection work was assigned solely to the employees represented by the Carpenters on January 29 after the Carpenters grieved the Employer’s use of composite crews of carpenters and laborers to perform the work. Following the Laborers’ grievance of the January 29 assignment of the disputed work to the Carpenters, the Carpenters threatened to picket the Employer if the assignment was changed.

We find reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred and that there exists no agreed-on method for voluntary adjustment of the dispute within the meaning of Section 10(k) of the

Act.<sup>4</sup> Accordingly, we find that the dispute is properly before the Board for determination.

#### E. Merits of the Dispute

Section 10(k) requires the Board to make an affirmative award of disputed work after considering various factors. *NLRB v. Electrical Workers IBEW Local 1212 (Columbia Broadcasting)*, 364 U.S. 573 (1961). The Board has held that its determination in a jurisdictional dispute is an act of judgment based on common sense and experience, reached by balancing the factors involved in a particular case. *Machinists Lodge 1743 (J. A. Jones Construction)*, 135 NLRB 1402 (1962).

The following factors are relevant in making the determination of this dispute.

##### 1. Certifications and collective-bargaining agreements

The record does not indicate that either the Carpenters or the Laborers have been certified by the Board regarding the employees they represent. Article 1, section 3 of the Carpenters contract, entitled “Occupation Scope,” refers to “the building, erecting and dismantling of all scaffolding and staging; the building and construction of all derricks; the making of mortar [sic] boards, boxes, and trestles; putting in needle uprights; all shoring of building, razing and moving buildings.”<sup>5</sup> Article XXIII of the Laborers contract, entitled “Jurisdiction of Work,” refers to “the building of scaffolding and staging for masons and plasterers,” “the shoring, underpinning and raising of all structures,” and “the assembling and dismantling of all jacks and sectional scaffolding, including elevator construction and running of slip form jacks.” As both contracts arguably cover the work in dispute, this factor equally supports an award of the shoring erection work to employees represented by each Union.

##### 2. Company preference and past practice

In December 1992, shoring work at the Faraday Hall project commenced and the work was initially assigned to carpenters. On December 29, 1992, after attempting to resolve the Union’s “rumblings” about the disputed work by bringing the parties together, the Employer assigned the shoring erection work to employees represented by the Carpenters. Although Field Superintendent Childers was authorized, at least apparently,

<sup>4</sup>No party contends that there are any applicable joint union board determinations that would preclude or otherwise affect the Board’s Determination of Dispute.

<sup>5</sup>The Laborers challenges the effectiveness of the collective-bargaining agreement between the Employer and the Carpenters inasmuch as an unsigned, undated copy of the purported agreement was submitted into evidence. The Laborers failed to refute, however, the assertions of the Carpenters and the Employer that neither could find a signed dated copy, and that the copy entered into evidence was in fact the applicable agreement governing their relationship.

<sup>3</sup>Tending refers to the practice of “handling” or bringing the un-assembled shoring forms to carpenters.

to accomplish the work as he saw fit and chose to use composite crews of carpenters and laborers, he ultimately reassigned the work to carpenters and cited the December 29 assignment as his basis after Carpenters Steward Wood grieved the performance of any of the shoring erection work by laborers.

Although the Employer's initial assignment of the work to carpenters is entitled to great weight as a reflection of its uncoerced preference, that weight is lessened slightly by the Employer's own disregard of the assignment on the next 5 days that shoring erection work was performed. Further, whatever weight may be accorded to the Employer's return to the initial assignment of the disputed work to carpenters, it too is somewhat lessened by the fact that the reversion was the result of the Carpenters' act—albeit lawful—of grieving the use of composite crews on January 29. Notwithstanding the Employer's wavering with respect to the actual performance of the work, its position in this 10(k) proceeding consistently has been that employees represented by the Carpenters should be awarded the work. Hence, considering the Employer's initial assignment of the work and its position in this proceeding, we find that Employer preference favors an award of the disputed work to the employees represented by the Carpenters.

Sleister cited numerous instances of the Employer's assignment of shoring erection work solely to carpenters at its construction projects in Illinois over the last 33 years. Five of these jobs entailed its use of tubular steel shoring similar to that used at the Faraday Hall site.<sup>6</sup> The Laborers does not offer substantial evidence bearing on the Employer's past practice except to note that it used composite crews at the sites in issue. Accordingly, the evidence concerning the Employer's past practice with regard to the erection of similar shoring favors an award of the disputed work to employees represented by the Carpenters.

### 3. Area and industry practice

The testimony presented by the parties indicates a varied area and industry practice, with some contractors assigning work of the type in dispute to carpenters, other contractors assigning the work in dispute to laborers, and still other contractors assigning such work to composite crews.<sup>7</sup> Moreover, the testimony of Carpenters Business Agent Sakalauski and Laborers Steward Taylor concerning the presence of laborers at the Northern Illinois University Music Building jobsite and whether they performed shoring erection work is in conflict and thus cannot resolve the issue. Therefore,

<sup>6</sup>It appears that the other projects involved the use of wooden shoring.

<sup>7</sup>The Laborers contends that this factor supports an award of the work to a composite crew of laborers and carpenters.

area and industry practice does not favor an award of the work to one group of employees over the other.

### 4. Relative skills

The Carpenters presented evidence that its journeyman program includes mandatory detailed and intricate training concerning the measuring, leveling, and balancing of the shoring forms used in the type of work disputed herein. The Laborers indicated that it offers training in shoring erection. Neither Union presented evidence, however, that carpenters or laborers employed at the Faraday Hall jobsite had undergone such training. Further, notwithstanding the Carpenters' relatively complex description of the skills required, particularly for leveling shoring, the record establishes that laborers performed a significant portion of the work with no complaints or other indications that the quality of their work was wanting or lower than that of carpenters who performed the work. Accordingly, this factor does not favor an award to employees represented by either Union.

### 5. Economy and efficiency

The Employer and the Carpenters assert that it is more efficient to have carpenters perform the work in dispute because they are more experienced. The Laborers contend that the use of composite crews to perform shoring erection is the most economical and efficient method because it avoids idling segments of the work force while waiting for other segments to finish a task.<sup>8</sup> However, there is no evidence that laborers were idled at the Faraday Hall construction site while waiting for carpenters or any other craft to finish a task. Thus, the factors of economy and efficiency do not favor an award of the disputed work to one union over the other.

### Conclusions

After considering all the relevant factors, we conclude that employees represented by Carpenters Local 790 are entitled to perform the work in dispute. We reach this conclusion relying on the Employer's preference and past practice. In making this determination, we are awarding the work to employees represented by Carpenters Local 790, not to that Union or its members. The determination is limited to the controversy that gave rise to this proceeding.

<sup>8</sup>Rodney Carlson, a district superintendent for CeCo, a construction contractor whose general practice is to use composite crews to perform shoring erection, testified that he told Sleister that it would be more economical for the Employer to use a composite crew because laborers' hourly wages are lower than the hourly wages of carpenters. The Board, however, does not assess economy on the basis of competing employees' wage scales.

## DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute.

Employees of C. Iber & Sons, Inc. represented by Carpenters Local 790 are entitled to perform the erec-

tion of tubular metal shoring, which includes sills, shoes, horsing, and saddles, at the Faraday Hall building addition construction site at Northern Illinois University, DeKalb, Illinois.